

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JAMES MCCODE,

Petitioner,

v.

CIVIL ACTION NO. 5:13-cv-21542

JOEL ZIELGER,

Respondent.

MEMORANDUM OPINION AND ORDER

On August 7, 2013, the Petitioner filed an *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1). On February 18, 2014, the Petitioner filed a *Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56(a)* (Document 19).


By *Standing Order* (Document 4) entered on August 20, 2013, this action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On August 4, 2014, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 26) wherein it is recommended that this Court deny the Petitioner's Motion for Summary Judgment, deny the Petitioner's Application for Writ of Habeas Corpus, and dismiss this action with prejudice and remove it from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by August 21, 2014.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's *Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56(a)* (Document 19) be **DENIED**, the Petitioner's *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1) be **DENIED**, and this action be **DISMISSED with prejudice** and **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented party.

ENTER: August 25, 2014


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA